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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,426	05/05/2004	Chih-Sung Wu	IEIP0013USA	3425
27765	7590	09/27/2006	EXAMINER	
NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION			MASKULINSKI, MICHAEL C	
P.O. BOX 506			ART UNIT	PAPER NUMBER
MERRIFIELD, VA 22116			2113	

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/709,426	WU, CHIH-SUNG
	<b>Examiner</b>	<b>Art Unit</b>
	Michael C. Maskulinski	2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 May 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                             |                                                                   |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|                                                                                                             | 6) <input type="checkbox"/> Other: _____.                         |

**Non-Final Office Action**  
***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 8 recites the limitation "the same algorithm" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-8 and 11-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Midgley et al., U.S. Patent 6,460,055.

Referring to claims 1 and 13:

- a. In column 18, lines 48-61, Midgley et al. disclose that the server and backup server have kernel space and user space (A real-time remote backup system used in a network system connecting at least one source computer

system and one destination computer system, each computer system consisting of a kernel space and a user space).

b. In column 2, lines 31-37, Midgley et al. disclose that the agent may comprise a process such as a computer process that is capable of monitoring a file access operation that occurs on the data server for determining whether the source data file is open. To this end, the agent may comprise a file system filter process that can detect file input and output calls to or through the operating system (and the backup system comprising: a loadable kernel module that pre-sets up at least a specific system call within the kernel space of the source computer system, receiving a notification generated from the pre-set system call to generate a corresponding file modification message when while a file modification event occurs in the user space of the source computer system).

c. In column 2, lines 37-41, Midgley et al. disclose that the agent may monitor file access operations to record byte level modifications to the source data file, and these byte level modifications may be recorded within the journal file as modifications made to the source data file (a scheduling module queuing each said file modification message from the loadable kernel module).

d. In column 2, lines 24-30, Midgley et al. disclose that the system comprises a synchronization replication process for replicating the source data file to create a target data file stored on the backup server, and a dynamic replication process that is responsive to data, within the journal file for altering the target data file to mirror changes made to the source data (and then generating a corresponding

backup command in response to the each file modification message; and at least one network backup unit installed in the source computer system, in accordance to a file information provided within the backup command, backing-up the variant part of the file through the network system to the destination computer system when receiving each backup command transmitted from the scheduling module).

Referring to claim 2, in column 16, lines 9-25, Midgley et al. disclose that the agent process intercepts an IRP generated by a use mode application through a user action, wherein the IRP would write data to the NT file system. The agent intercepts the request to write the data carried within the IRP. The agent than passes the request to the NT file system to allow the data to be written to the device, which can be a hard disk drive. If the data is successfully written to the device, the device driver returns through the file system and through the filter an IRP that indicates the write was successful. The data for the IRP may than be copied by the agent to a journal file which is monitoring the file for which the data write have occurred. Once the data has been written to the journal file or to multiple journal files responsible for monitoring such write operations, the IRP is allowed to complete and the user application is notified that the write has been successful (wherein the loadable kernel module further comprises a replacement unit for replacing an original system call in the source computer system to the specific system call).

Referring to claim 3, in column 11, lines 46-50, Midgley et al. disclose a graphical image of the file structure of the server, allowing the user to select those directories, subdirectories, and data files on the server that are to be source data files and backed

up (a graphical user interface (GUI) having an automatic network backup switch for providing the user to switch on/off an automatic network backup function, so that the replacement unit of the loadable kernel module will replace back to the original system call when the automatic network backup function is switched off).

Referring to claims 4 and 19, in column 15, lines 34-48, Midgley et al. disclose each server having source data files that are to be replicated on the backup server may include an agent process that runs as a process on the server and that monitors accesses to source data files made through the operating system. In one embodiment, the agent process is a file system filter (FSF). An FSF may be a driver layer that sits above a file system driver stack. This filter interface allows the backup system to "hook" a file system and intercept input/output traveling between the operating system and the underlying drivers. The filter may pass the data unmodified, and redirect the data to the journal file as well as perform some time stamping operations and grouping operations that organize the captured data into a format suitable for use by the backup system when processing the journal file (a call determining unit determining whether the specific system call is one of a plurality of predetermined system calls; and a message processing unit generating the file modification message to the scheduling module, according to determination of the call determining unit that the specific system call is one of a plurality of predetermined system calls).

Referring to claims 5, 14, and 17, in column 16, lines 59-64, Midgley et al. disclose that each data file an entry can be made indicating the identity of the corresponding target data file for the respective source data file, a time stamp that

provides time and date information, and a field that includes a set of changes that were made by a user mode application to the underlying source data file (wherein the file modification message comprises at least a filename and path of the modified file).

Referring to claim 6, in column 7, lines 1-4, Midgley et al. disclose that as changes are detected to source data files, the information is stored within the journal file and the journal file is transmitted to the backup server where it can be processed by a transaction processor (wherein the scheduling module further comprises a queue unit for accommodating the file modification messages in sequence from the loadable kernel module).

Referring to claim 7, in column 16, lines 59-64, Midgley et al. disclose that each data file an entry can be made indicating the identity of the corresponding target data file for the respective source data file, a time stamp that provides time and date information, and a field that includes a set of changes that were made by a user mode application to the underlying source data. Further, in column 7, lines 1-4, Midgley et al. disclose that as changes are detected to source data files, the information is stored within the journal file and the journal file is transmitted to the backup server where it can be processed by a transaction processor (wherein the scheduling module further comprises a schedule managing unit for queuing sequentially each said message into the queue unit, and a schedule processing unit for sequentially reading the messages out the queue unit and transmitting the backup commands according to the messages).

Referring to claim 8, in column 16, lines 30-37, Midgley et al. disclose that the agent process can then store the changes within the journal file in a process that time

stamps the recorded changes to provide delimitations which indicate the time of occurrence for certain changes to a particular source data file. In this way the journal file may maintain a record of the source data files that are being modified in the order in which these modifications take place (wherein the schedule managing unit and the schedule processing unit use the same algorithm).

Referring to claims 11, 15, and 18, in column 16, lines 59-64, Midgley et al. disclose that each data file an entry can be made indicating the identity of the corresponding target data file for the respective source data file (wherein the backup command comprises at least the path of the varied file).

Referring to claim 12, in column 3, lines 47-56, Midgley et al. teach wherein the destination computer system further comprises another one same network backup unit for receiving backup data from the source computer system.

Referring to claim 16:

a. In column 18, lines 48-61, Midgley et al. disclose that the server and backup server have kernel space and user space (A method of real-time remote backup used in a network system interconnecting between at least one source computer system and one destination computer system, each computer system consisting of a kernel space and a user space).

b. In column 2, lines 31-37, Midgley et al. disclose that the agent may comprise a process such as a computer process that is capable of monitoring a file access operation that occurs on the data server for determining whether the source data file is open. To this end, the agent may comprise a file system filter

process that can detect file input and output calls to or through the operating system (implementing a specific system call that is pre-loaded by a loadable kernel module in the kernel space of the source computer system, to notify a kernel of the source computer system of a file modification event when the file modification event occurs in the user space of the source computer system).

c. In column 2, lines 37-41, Midgley et al. disclose that the agent may monitor file access operations to record byte level modifications to the source data file, and these byte level modifications may be recorded within the journal file as modifications made to the source data file (the loadable kernel module being notified of said file modification event to determine whether a file modification message should be generated with reference to the type of the specific system call, as soon as the specific system call is implemented).

d. In column 2, lines 24-30, Midgley et al. disclose that the system comprises a synchronization replication process for replicating the source data file to create a target data file stored on the backup server, and a dynamic replication process that is responsive to data, within the journal file for altering the target data file to mirror changes made to the source data. Further, in column 16, lines 59-64, Midgley et al. disclose that each data file an entry can be made indicating the identity of the corresponding target data file for the respective source data file, a time stamp that provides time and date information, and a field that includes a set of changes that were made by a user mode application to the underlying source data. Further, in column 7, lines 1-4, Midgley et al. disclose that as changes are

detected to source data files, the information is stored within the journal file and the journal file is transmitted to the backup server where it can be processed by a transaction processor (queuing in sequence each said file modification message into a queue unit; sequentially taking and processing the file modification messages from the queue unit to generate a corresponding backup command; and a network backup unit backing-up the modified part of the file to the destination computer system, through the network, according to the backup command).

***Allowable Subject Matter***

6. Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art is related to backing up files in a networked computer system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Maskulinski whose telephone number is (571) 272-3649. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoleil can be reached on (571) 272-3645. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael C Maskulinski  
Examiner  
Art Unit 2113